

WWR Ref. No. 06562552

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS (Eastern Division)**

|                                |   |                          |
|--------------------------------|---|--------------------------|
| ADVANCE PAYROLL FUNDING, LTD., | ) | CASE NO. 08 C 1072       |
|                                | ) |                          |
| Plaintiff,                     | ) |                          |
|                                | ) |                          |
| vs.                            | ) | JUDGE MILTON I. SHADUR   |
|                                | ) | MAG. JUDGE ARLANDER KEYS |
| DURACO PRODUCTS, INC.,         | ) |                          |
| dba DURACO PLASTICS            | ) |                          |
|                                | ) |                          |
| Defendant.                     | ) |                          |

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**PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGEMENT  
PURSUANT TO FED.R.CIV.P. 59(e)**

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Now comes Plaintiff, Advance Payroll Funding, Ltd. (hereinafter "Advance Payroll"), by and through counsel, and hereby files its Motion to Alter or Amend the Court's Notification of Docket Entry and Memorandum Order of February 25, 2008, pursuant to Fed.R.Civ.P. 59(e), based upon the following:

1. On February 21, 2008, Advance Payroll filed a Complaint against Defendant Duraco Products, Inc. dba Duraco Plastics.

2. In its Complaint, Advance Payroll averred in pertinent part that:

"1. Plaintiff, Advance Payroll, is an Ohio Domestic Limited Liability Company whose principal place of business is 3401 Enterprise Parkway, 5th Floor, Cleveland, Ohio 44122. \* \* \*."

3. In its Complaint, Advance Payroll averred in pertinent part that:  
“3. Defendant, Duraco Products, is an Illinois Corporation whose principal place of business is 1109 East Lake Street, Streamwood, IL 60107-4395. \* \* \*.”

4. In its Complaint, in support of Jurisdiction, Advance Payroll averred in pertinent part that:

4. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §1332(a)(1) and (2) because complete diversity of citizenship exists between the parties.

5. The amount in controversy exceeds the sum or value of Seventy Five Thousand Dollars and no cents (\$75,000.00) exclusive of court costs and interest, and is between citizens of two different states.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(2) in that a substantial portion of the activity which is the subject of this action occurred in this judicial district.

7. Venue is also proper in this Court pursuant to 28 USC §1391(a)(1) because complete diversity of citizenship exists between the parties as above mentioned.

5. On February 21, 2008, and, contemporaneously with its Complaint, Advance Paryroll filed its Corporate Disclosure Statement and Notification of Affiliates Disclosure Statement pursuant to Fed.R.Civ.P. 7.1 and Loc.R. 3.2 (hereinafter “Disclosure Statement”).

6. Due to an error of interpretation, Advance Payroll, a limited liability company, did not list its member on the Disclosure Statement as is required by Loc.R. 3.2(B). See Affidavit of Jeremy Bilsky, attached hereto as Exhibit 1, at paragraphs 2 and 3.

7. Advance Payroll Funding, Ltd. is an Ohio limited liability company, which is wholly owned by an Ohio corporation. The omission of this fact in Plaintiff's Disclosure Statement was not meant to be discourteous to the Court. See Affidavit of Jeremy Bilsky, at paragraphs 3.

8. Due to an unintentional misunderstanding of Loc.R. 3.2(B), and miscommunication with private counsel, the identity of Advance Payroll's sole member, Advance Temporary Help Service, Inc., was not relayed to counsel. See Affidavit of Jeremy Bilsky, at paragraph 4.

9. Advance Payroll's sole member is Advance Temporary Help Service, Inc., an Ohio corporation. See Affidavit of Jeremy Bilsky, at paragraph 5.

10. Advance Temporary Help Service, Inc.'s Initial Articles of Incorporation are attached to the Affidavit of Jeremy Bilsky as Exhibit 1-A.

11. Both Advance Payroll and its sole member, Advance Temporary Help Service, Inc., are citizens of Ohio, and neither Advance Payroll nor Advance Temporary Help Service, Inc. is a citizen of Illinois. See Affidavit of Jeremy Bilsky, at paragraph 7.

12. Complete diversity exists in this case, as Defendant is a citizen of the State of Illinois, and as both Plaintiff and its sole member, Advance Temporary Help Service, Inc., are citizens of the State of Ohio, and as neither Plaintiff nor any member or affiliate of Plaintiff is a citizen of the State of Illinois. See Affidavit of Jeremy Bilsky, at paragraph 8.

13. On February 25, 2008, Advance Payroll received this Court's Notification of Docket Entry and Memorandum Order, dismissing the within action for want of proper establishment of subject matter jurisdiction.

14. In the last paragraph of the Memorandum Order, the Court stated in part:

\* \* \* That said, however, this Court has no desire to force plaintiff's counsel, if the defect identified in the cited cases is curable, to have to redo the bulky Complaint and its exhibits. Accordingly, if a timely motion were to be filed under Fed. R. Civ. P. 59(e) that demonstrates that the requisite diversity is indeed present, this Court would consider granting such a motion on condition that plaintiff pay into court the same \$350 amount that would be applicable to a newly-filed action.

15. Pursuant to those instructions, Advance Payroll hereby files its timely motion pursuant to Fed.R.Civ.P. 59(e), which provides:

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment.

16. If relief is granted, upon reinstatement, Advance Payroll will file its corrected and conforming *Plaintiff's Amended Corporate Disclosure Statement and Notification of Affiliates Disclosure Statement pursuant to Fed.R.Civ.P. 7.1 and Loc.R. 3.2*, listing Advance Payroll's sole member Advance Temporary Help Service, Inc.

17. A courtesy copy of *Plaintiff's Amended Corporate Disclosure Statement and Notification of Affiliates Disclosure Statement pursuant to Fed.R.Civ.P. 7.1 and Loc.R. 3.2*, is attached hereto as Exhibit 2.

WHEREFORE, Plaintiff Advance Payroll Funding, Ltd. moves this Court to alter and amend its Notification of Docket Entry and Memorandum Order of February 25, 2008 pursuant to Fed.R.Civ.P. 59(e), reinstate this above-captioned matter, and grant Advance Payroll leave to file its corrected and conforming *Plaintiff's Amended Corporate Disclosure Statement and Notification of Affiliates Disclosure Statement pursuant to Fed.R.Civ.P. 7.1 and Loc.R. 3.2* upon reinstatement.

Respectfully submitted,

ADVANCE PAYROLL FUNDING, LTD.,

/s/ Robert T. Kuehl

Robert T. Kuehl (Ill. Bar No. 6271281)

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| DURACO PRODUCTS, INC.,         | ) |                          |
| dba DURACO PLASTICS            | ) |                          |
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**PROOF OF SERVICE OF  
PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT  
PURSUANT TO FED.R.CIV.P. 59(E),**

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I, Robert T. Kuehl, certify as follows under penalty of perjury this 27th day of February, 2008.

1. I filed *Plaintiff's Motion to Alter or Amend Judgment Pursuant to Fed.R.Civ.P. 59(e)*, as well as the accompanying *Plaintiff's Notice of Presentment of Motion* and *Plaintiff's Notice of Motion*, by filing it with the clerk of court by electronic means.

2. I further caused copies of *Plaintiff's Motion to Alter or Amend Judgment Pursuant to Fed.R.Civ.P. 59(e)*, as well as the accompanying *Plaintiff's Notice of Presentment of Motion* and *Plaintiff's Notice of Motion*, to be served by regular mail, pursuant to Loc.R. 5.3(a)(2) and Fed.R.Civ.P. 5(b)(2)(C), to DURACO PRODUCTS, INC., dba DURACO PLASTICS, c/o agent C T Corporation System, at the agent's last known address of 208 S. LaSalle Street, Suite 814, Chicago, IL 60604.

3. I further caused copies of *Plaintiff's Motion to Alter or Amend Judgment Pursuant to Fed.R.Civ.P. 59(e)*, as well as the accompanying *Plaintiff's Notice of Presentment of Motion* and *Plaintiff's Notice of Motion*, to be served by regular mail, pursuant to Loc.R. 5.3(a)(2) and Fed.R.Civ.P. 5(b)(2)(C), to DURACO PRODUCTS, INC., dba DURACO PLASTICS, at its last known address of 1109 East Lake Street, Streamwood, IL 60107-4395.

Respectfully submitted,

ADVANCE PAYROLL FUNDING, LTD.,

/s/ Robert T. Kuehl

Robert T. Kuehl (Ill. Bar No. 6271281)

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